

Message

From: Atagi, Tracy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EBCFD670077440DFB63A691749F20AF2-TATAGI]
Sent: 6/6/2018 2:15:02 PM
To: Galbraith, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0abf7f5c1a5e462e8096cb58ef9757eb-MGALBRAI]
CC: Young, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=26404c78d3dc441f810ac723cf8f9d49-JBIEGELS]; Kohler, Amanda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=665a6cdd3371457fb03d5184f58f7a4a-Kohler, Amanda]
Subject: Fw: LDEQ approach to Verified Recycler Exemption


From: Fruitwala, Kishor
Sent: Wednesday, June 6, 2018 10:00 AM
To: Kevin Matthews
Cc: Luschek, Robert; Potts, Mark; Tidmore, Guy; Jones, Bruce; Atagi, Tracy
Subject: RE: LDEQ approach to Verified Recycler Exemption

Kevin,

I have just returned from a two-week vacation, and hence, the delay in responding back to you. Let me check the availability of people next week for a meeting/conf call. Would you have any preference – June 13/14/15?

Thank you.

Kishor

Kishor Fruitwala, Ph.D.
Chief, RCRA Permits Section (6MM-RP)
Multimedia Division, EPA Region 6
214-665-6669 

From: Spalding, Susan
Sent: Tuesday, May 29, 2018 3:47 PM
To: Kevin Matthews <KMatthews@nationalstrategies.com>
Cc: Fruitwala, Kishor <Fruitwala.Kishor@epa.gov>; Luschek, Robert <Luschek.Robert@epa.gov>; Potts, Mark <Potts.Mark@epa.gov>
Subject: RE: LDEQ approach to Verified Recycler Exemption

Kevin – thanks for your note. I am copying Kishor Fruitwala and Rob Luschek from my branch and Mark Potts from enforcement in my reply for their follow-up. Also including Bruce Jones from Regional Counsel. I am retiring tomorrow so I will ask Kishor to take the lead on scheduling a discussion. I suspect they will also want to coordinate with EPA HQ.

Susan Spalding, Associate Director
Hazardous Waste Branch
EPA Region 6
(214) 665-8022

From: Kevin Matthews [<mailto:KMatthews@nationalstrategies.com>]
Sent: Tuesday, May 29, 2018 2:41 PM
To: Spalding, Susan <Spalding.Susan@epa.gov>
Subject: LDEQ approach to Verified Recycler Exemption

Susan,

We've had a series of calls/meetings with LDEQ as it relates to the Thermaldyne Permit and VRE. Based on those meetings we would like to request a follow up meeting in Dallas with your team and hopefully the enforcement side of the shop. There are several parts of this approach that we would like to bring to Region 6's attention and provide our thoughts and input as well as answer any questions you may have. We would like to arrange this meeting as soon as possible given the time frame in LA that could allow Thermaldyne to proceed. We are of course happy to work around your schedule. As for background here is a summary of our understanding of LDEQ staff plans for implementing the EPA's rule on the Transfer-Based Exclusion under the Definition of Solid Waste re-write.

- LDEQ stated that they have already adopted the Verified Recycler Exclusion (VRE), and that they do not intend to rescind it. When EPA rescinds the VRE based on the court order, that will not affect LDEQ keeping it in their adopted regulations. They feel that the VRE is more restrictive than the Transfer-Based Exclusion, and that it is acceptable under Federal Law for a State to have regulations that are more restrictive than EPA regs.
- Then, LDEQ said that they plan to allow Thermaldyne to operate their TDU on listed and characteristic hazwaste under the VRE, and thereby exclude their feed material from the DSW by issuing them a VRE variance. They believe that the air permit is sufficient to manage air emissions, and appear to be ready to approve Thermaldyne ops with no additional technical requirements. For information, the Thermaldyne air permit has essentially no technical requirements, nor any demonstration testing requirements, and for practical purposes only restricts Thermaldyne to operate so as to create no visible emissions.
- Then, LDEQ said that they intend to instruct other permitted units (we infer that means Chem Waste) to file Class 1 Mods to remove the TDU from their RCRA permit and operate under the VRE without any technical requirements.

Of course there is a lot of nuance that gets LDEQ to the above positions. Their basic position seems to be that once a waste is excluded from the DSW by variance, the RCRA technical standards don't apply to the recycling process. So, it would seem that if the RCRA technical standards do apply to TDUs that combust all or a portion of their hazardous waste feed, as clearly established by the Rineco and USET/TDX enforcement actions, that the States need to be instructed to not grant VRE variances for that activity, or if they do, to fully incorporate the technical criteria of RCRA (i.e. MACT EEE) into the variance, including a requirement to conduct a performance test.

We do appreciate the time and consideration Region 6 has given this issue to date and we do look forward to discussing as soon as possible.

Please let me know if you have any questions.

Many thanks,
Kevin

KEVIN L. MATTHEWS

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